

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Appellant:

Crain et al.

Filed: March 19, 2001

Serial No.: 09/812,405

For: METHODS AND DEVICES FOR  
RECORDING CHANGES IN VISUAL STIMULI  
OBSERVED THROUGH BROWSER-BASED  
INTERFACES

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Confirmation No.: 3389

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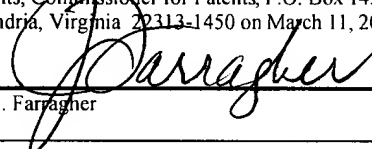
Examiner: Ke, Peng

Docket No.: 125273.00007

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ATTENTION: Board of Patent Appeals and Interferences

**REPLY TO EXAMINER'S ANSWER**

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## STATUS OF CLAIMS (37 C.F.R. § 41.37(c)(3))

The status of the claims in this application are:

### A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 19 claims. (Claims 1-15 and 18-21)

Claims currently pending in the application: 19 pending claims

### B. STATUS OF ALL THE CLAIMS

1. Claims cancelled: 16-17
2. Claims withdrawn from consideration but not cancelled: NONE
3. Claims pending: 1-15 and 18-21
4. Claims allowed: NONE.
5. Claims rejected: 1-15 and 18-21

### C. CLAIMS ON APPEAL

The claims on appeal are: 1-15 and 18-21

**II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**  
**((37 C.F.R. § 41.37(c)(6))**

1. Whether claims 1-15 and 18-21 are unpatentable under 35 U.S.C. 103(a) over Rapaport in view of Ezekiel

### III. ARGUMENTS ((37 C.F.R. § 41.37 (c)(7))

**1. The Examiner has failed to address numerous grounds of appeal, and by so doing, has failed to rebut those grounds.**

The issues raised on appeal relate to claim construction. The Examiner has failed to rebut the arguments presented by Appellants which demonstrate that the following claim terms have not been properly construed by the Examiner, no doubt because the Examiner is unable to do so. These terms are:

“detecting a visual event”

“verifying that the visual event involves a parameter that changes a viewable stimuli”

“recording at least one parameter”

“a processing platform for: executing code capable of recording a user-viewable visual stimuli”

“verifying a change in the visual stimuli”

“verifying a change in a user’s eye position”

“creating a visual event as a result of a browser event that causes the change in the visual stimuli and to the change in the user’s eye position with respect to a portion of the visual stimuli”

The Examiner has been given full opportunity to rebut the arguments presented on appeal in regards to these claim terms, namely, that the construction of these terms that was adopted by the Examiner, in order to support a rejection of the claims over Rapaport, is improper. While claim terms can be improperly construed so as to attempt to argue that a reference anticipates a claim, as the Examiner has done, the purpose of appeal is to focus consideration on such claim construction positions so as to allow a determination of the proper claim construction to be made.

Because the Examiner is unable to even articulate a single argument for any of these claim terms as to why the construction proposed by the Appellant, namely, the plain meaning, should not control, the Examiner must be **REVERSED**.

**2 The Examiner has failed to rebut that Rapaport fails to disclose verifying a change in the visual stimuli without requiring user-specified information as an input.**

The first of selected few of the many claim construction arguments raised on appeal that the Examiner has chosen to address is whether Rapaport discloses “verifying a change in the visual stimuli without requiring user specified information as an input.” In the final Office action mailed November 11, 2006, the Examiner states at page 2 that “the examiner interprets determining whether a scroll bar is depressed as verifying a change in visual stimuli,” citing to Rapaport at col. 12, lines 33-37. In the Examiner’s answer, however, the Examiner asserts that Rapaport discloses at col. 12, lines 40-60 identifying “changes in the profile object activation value,” asserting that the visual stimuli disclosed in Rapaport “are the same as those identified in appellant’s specification.” However, it is improper to read limitations from the specification into the claims. *In re Donaldson*, 16 F.3d 1189, 1195 (Fed. Cir. 1994) (“... limitations found only in the specification of a patent or patent application should not be imported or read into a claim.”) This is exactly what the Examiner has done.

The limitation of “verifying a change in the visual stimuli without requiring user specified information as an input” can not be accomplished simply by gathering data “regarding where a user’s eyes are looking and information about the user’s eyes, such as pupil dilation,” as such data can change even if there is no change in visual stimuli, such as when a user is looking at a static page. Instead, the change must be verified in some other manner, which is exactly

why the Examiner cited to Rapaport at col. 12, lines 33-37 in the final Office action mailed November 11, 2006, stating that “the examiner interprets determining whether a scroll bar is depressed as verifying a change in visual stimuli.” Now, on appeal, the Examiner realizes the impropriety of the rejection, reverses his previous position, and confounds the limitations of the claim at issue with subject matter from the specification that is not recited in the claims. However, the Examiner further stated at page 3 of the final Office action that “[s]ensing changes in eye pupil diameter is neither an user specified information nor an examination of how the user is looking at the visual stimuli,” thus demonstrating that the Examiner has reversed *two different and contradictory positions* regarding the construction of this claim term. Regardless of which position the Examiner now adopts, Applicants maintain the position presented on appeal, namely, that either determining whether a scroll bar is depressed or measuring pupil dilation, either alone or in combination, fails to anticipate “verifying a change in the visual stimuli without requiring user specified information as an input,” based on the plain language of the claims. The Examiner has thus failed to rebut Appellants’ arguments, and must be **REVERSED**.

**3. The Examiner has failed to rebut that Rapaport fails to disclose executing code capable of recording a user-viewable stimuli.**

In regards to the question on appeal regarding the proper claim construction of the term “executing code capable of recording a user-viewable visual stimuli,” the Examiner asserts that the activation values stored in a personal profile database are visual stimuli. However, Rapaport defines an activation value at col. 7, lines 19-21 as follows: “The Activation value is adjusted by the user's choices in accessing media files and interaction with media files.” As such, an

activation value is not “user-viewable visual stimuli,” but rather a *value* that is adjusted by the user's choices in accessing media files and interaction with media files. Based on the plain language of the claim term “executing code capable of recording a user-viewable visual stimuli,” adjusting a variable based on a user's choices in accessing media files and interaction with media files is simply not “recording a user-viewable visual stimuli,” much less “executing code capable of recording a user-viewable visual stimuli.” Accordingly, the Examiner has failed to rebut Appellants’ arguments, and must be **REVERSED**.

**4. The Examiner has failed to rebut that Rapaport fails to disclose creating a visual event relating to a change in the visual stimuli.**

The Examiner summarily asserts that a “profile *objection* activation value” includes visual stimuli, citing to page 10 of the Examiner’s answer. Assuming that the Examiner meant to rely on the profile *object* activation value of Rapaport, as discussed above, this value is a variable value that is adjusted by the user's choices in accessing media files and interaction with media files, which does not include visual stimuli as demonstrated above.

Furthermore, the other sections of Rapaport relied on by the Examiner for other claim limitations relating to the claim limitation of “creating a visual event relating to a change in the visual stimuli” are similarly unrelated to the claim term at issue. For example, the Examiner asserts that the system of Rapaport will “highlight sections of a media file in response to the value assigned to the media file based on its associated key words.” This has absolutely nothing to do with “creating a visual event relating to a change in the visual stimuli.” Instead, it deals with highlighting sections of text that match keywords after converting a sound file to text. See, e.g., Rapaport at col. 2, lines 50-67 (“According to another aspect of the present invention, the



media evaluation software program includes a sound file to text file software program for translating a sound file to a text file. . . . According to another aspect of the present invention, the personal feedback browser includes a mark-up software program for highlighting sections of a media file in response to a plurality of key words assigned sound values in the media file.”) The highlighting of sections of the media file is performed in response to a match with a plurality of key words, and is not “creating a visual event relating to a change in the visual stimuli.” The key words are not a result of visual stimuli, much less a change in visual stimuli. As disclosed at col. 14, lines 49-62 of Rapaport:

Profile Builder 211 includes several methods to enable a user to create a data set containing Profile Object parameters and a text comprehension parameter in Personal Profile database 107. These methods include user interactive methods where the user identifies, activates and positions Profile Objects representing interests, attitudes, and other characteristics of the user. Also, survey-question methods are used, as well as conjoint or choice-based analysis methodologies. . . . The Identity/interest test utilizes Identity/interest Profile Objects which include key words and key phrases that help the user identify themselves through their interests and the concepts, ideas and activities by which they identify themselves.

As such, it is clear that a user enters key words, and they are not a result of visual stimuli, much less changes in visual stimuli. Again, as the Examiner has failed to rebut Appellants’ arguments, the rejections must be **REVERSED**.

If any applicable fee or refund has been overlooked, the Commissioner is hereby authorized to charge any fee or credit any refund to the deposit account of Jackson Walker, LLP, No. 10-0096.

Respectfully submitted,

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